

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ADW, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TINISHA WASHINGTON,

Respondent-Appellant,

and

RICHARD LLOYD DENDY,

Respondent.

UNPUBLISHED

May 27, 2003

No. 241795

Wayne Circuit Court

Family Division

LC No. 00-393776

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent Tinisha Washington appeals as of right from a circuit court order terminating her parental rights to the minor child ADW pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Washington is the mother of the minor child ADW, born June 28, 1999. The FIA filed a neglect petition in October of 2000 because Washington, who had a history of crack cocaine use and was homeless, had been arrested for abandonment and violation of probation. At a hearing in mid-January of 2001, Washington admitted the allegations in the petition. ADW was adjudicated a court ward and a treatment plan was established for the parents. The plan called for Washington to participate in counseling, complete substance abuse treatment and parenting classes, provide weekly drug screens, obtain suitable housing and a legal source of income, and rectify all criminal proceedings.

Apparently, Washington worked diligently toward reunification. She had been released from jail on January 16, 2001. She then entered an in-patient drug treatment program, which she

completed on February 7, 2001. She followed up with AA/NA meetings and counseling. She also completed parenting classes. She visited ADW regularly, interacted with him appropriately, and utilized concepts taught in parenting classes. At the April 2001 review hearing, the trial court noted that Washington “has come a long way, she’s done a lot” and the FIA was seeking unsupervised visitation for her.

Washington was still doing well as of the July 2001 review hearing, at which time the only serious obstacle to reunification was her lack of housing, but she had begun to backslide by the October 2001 permanency planning hearing. Specifically, she had incurred new criminal charges and was homeless, living with her mother and stepfather. She had either quit or been fired from her job and had failed to provide proof of subsequent employment. She had been terminated from counseling due to sporadic attendance and minimal participation. She stopped providing drug screens and was suspected of using again. However, because Washington appeared to be bonded with her son, the trial court declined to authorize a termination petition and ordered her to make a better effort to comply with the treatment plan. For reasons unclear from the record, a supplemental petition for termination was nevertheless filed.

When the case came up for hearing, the parties agreed to adjourn the proceedings so Washington could enter another drug treatment facility. The FIA indicated that it would withdraw the supplemental petition upon Washington’s “total investment” in treatment. However, Washington did not enter treatment and the hearing continued the following month. At that hearing, Kim Trembinski, the foster care worker, testified that ADW had entered foster care since Washington “had a substance abuse issue, . . . she was homeless and . . . she had abandoned her child.”

An important issue at the hearing was Washington’s continued problems with the law. At the time the original petition was filed, Washington was on probation. As a result of the neglect proceedings, “she was in violation of probation, had to serve time for that.” On July 29, 2001, Washington was arrested for disorderly conduct. She was arrested again the following month for loitering and resisting arrest. Washington apparently served a few days in jail and paid fines to resolve those charges. She was arrested again in October 2001 for “flagging,” i.e., trying to flag down passing motorists “with the intent of prostitution.” She missed a pretrial hearing relating to that charge and there was a warrant out for her arrest. Trembinski had not received any verification from Washington that the matter had been resolved.

An additional issue was Washington’s substance abuse treatment. Initially, Washington entered Procure, a short-term, inpatient program, and completed it in February of 2001. She did not, however, complete the aftercare, outpatient portion of the program. Washington was also to provide weekly random drug screens. She was to call in each day to find out if a screen was required. Washington was in compliance until July of 2001. However, of the fifty-one screens scheduled in 2001, she completed only thirty-three. The screens from October 29 and November 15 or 16 and 26, 2001 were positive for marijuana. Washington also provided drug screens at a counseling center. Her November 6, 2001 screen was positive for marijuana and cocaine and her December 4 screen was positive for marijuana.

Trembinski testified that she discussed the screens with Washington. At first, Washington denied using drugs, but later confessed that she had given in to peer pressure and used drugs. She also admitted smoking marijuana on Christmas Day. Washington completed a

majority of the screens scheduled in 2002; all were negative except the one from March 12, 2002, which came back as “positive abnormal report.” Trembinski said, “I have not been able to find out what that means.” Washington provided verification of attendance at AA/NA meetings through October 15, 2001. She had not provided any since then.

In addition to substance abuse treatment, Washington was also to engage in counseling. She was referred to Catholic Social Services and began treatment in March of 2001. She apparently attended until late September of 2001 when she failed to appear for an appointment. This was the last documented date in the progress report. At the end of October of 2001, Washington sought out treatment at Woodward Counseling. Washington’s therapist at Woodward, Marie Fox, informed Trembinski that she had

last attended treatment on February 14, 2002. She appeared to be high and could not produce a useable drug screen at that time. She failed to show for following appointments or her sessions after that date and that she was living at the Pontiac Rescue Mission They recommended that she get inpatient treatment or detox or hospitalization.

After the first hearing date, Trembinski referred Washington for long-term inpatient treatment at state expense. To enter the program, respondent had to complete a substance abuse assessment. She was not honest with the evaluator, who thus recommended outpatient treatment. Trembinski explained: “She went in and said that she didn’t need any services the only reason she was doing this was because the court had ordered her to. She thought she was doing fine without any of the services. She did not [tell] the assessor that she had used recently and the reason that’s she’s using is because she keeps putting herself into a situation surrounding herself with people that are using that she knows are using. She keeps giving in to the temptation of drugs.”

Washington later sought out treatment on her own. She entered Havenwick Hospital in March of 2002, believing that the state would pay for drug treatment if she had a disability. She was discharged after four days with a prescription for Risperdal and an appointment for a psychiatric assessment; she failed to appear for that appointment or the make-up date. As of the time of the hearing, Trembinski had “not received any verification or indication that she started a substance abuse treatment program.” Trembinski testified that she asked Washington why she wasn’t in treatment and Washington said that “she doesn’t feel she needs the help and she doesn’t need therapy, she doesn’t need to go.”

Another issue at the hearing was Washington’s housing. After leaving Procure, Washington was at a three-quarters house “which helped the substance abusers.” After that, she resided with a variety of friends whose homes were admittedly not suitable, a shelter in Pontiac, or with her mother and stepfather, with whom she was currently residing. Trembinski said their home was not suitable because Washington’s mother also used drugs, her husband was an alcoholic, and there was no proof that they’d been in treatment. Washington provided verification of employment, but generally left each job after two or three months, citing “problems with management.” Her most recent pay stub was from January 21, 2002, but she advised Trembinski that she had since left that job.

However, Washington did complete parenting classes. She also visited ADW regularly and had even earned unsupervised visitation. However, after a later incident, the quality of Washington's visitation declined. According to Trembinski, Washington attempted to sleep during visits, "turning the lights off, covering herself with a blanket," and tried "to get [ADW] to lay down with her." One day, Trembinski found Washington "inside of my office searching through my drawers and my files and found a report that pertained to her and was making corrections on it writing down this is a lie, that's not true"

Trembinski recommended that Washington's parental rights be terminated. She explained, "I have not seen a commitment to [ADW] despite her statements that she wants him, I don't see any efforts to try to get him back. I've asked her what her plans were for herself, how does she plan to take care of herself and her son and she can't give me any plan. [ADW], he's going to be three, he needs a stable, permanent home."

Washington submitted some AA/NA attendance sheets; however, their contents were not disclosed on the record and they are not in the file. Following the completion of proofs, the referee ruled that termination was warranted because Washington had failed to follow through with substance abuse treatment. The referee later issued a written report recommending termination, stating:

The mother, Tinisha Washington, did attempt to complete her treatment plan, but she was unsuccessful. Initially, she was referred to drug treatment at Pro Care. Although she completed the inpatient portion, she did not follow through with completing the out patient portion of the drug treatment. She was required to go back into inpatient treatment after relapsing. She never completed an inpatient or out patient drug treatment program. She claims to have returned to the Woodward Clinic but is unable to produce any verification that she completed it. She has down played her drug usage to assessors and appears to minimize the seriousness of her addiction. The mother did not complete[] her individual [counseling] or is she able to provide suitable housing.

The trial court approved the report and entered an order of termination.

II. Standard Of Review

This Court reviews a trial court's decision to terminate parental rights for clear error.¹ If the trial court determines that petitioner established the existence of one or more statutory grounds for termination by clear and convincing evidence, then the trial court must terminate respondent's parental rights unless it determines that to do so is clearly not in the child's best interests.² We review for clear error the trial court's decision with regard to the child's best interests.³

¹ MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

² MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

³ *Id.* at 356-357.

III. The Trial Court's Decision

We conclude that the trial court did not clearly err in finding that the statutory grounds for termination had been proved by clear and convincing evidence.⁴ As set out above, Washington initially made significant progress in complying with the treatment plan. However, she resumed using drugs and did not obtain additional substance abuse treatment and failed to complete counseling. As of the hearing date, Washington was still homeless and once again out of work. Further, the trial court did not clearly err in its determination that the evidence, on the whole record, did not show that termination was clearly not in the child's best interests.⁵ Therefore, the trial court did not clearly err in terminating respondent's parental rights to the minor child.⁶

Affirmed.

/s/ William C. Whitbeck

/s/ Helene N. White

/s/ Pat M. Donofrio

⁴ *In re IEM*, 233 Mich App 438, 450; 592 NW2d 751 (1999).

⁵ *In re Trejo Minors*, 462 Mich 341, 354, 356-357; 612 NW2d 407 (2000); MCL 712A.19b(5).

⁶ *Trejo*, *supra* at 356-357.